

AMENDED IN SENATE MARCH 20, 2017

SENATE BILL

No. 384

Introduced by ~~Senator Wiener~~ *Senators Wiener and Anderson*
(*Coauthor: Senator Allen*)
(Principal coauthors: Assembly Members Dababneh and Santiago)
(Coauthor: Assembly Member Obernolte)

February 14, 2017

An act to amend Section 25631 of, and to add Section 25634 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as amended, Wiener. Alcoholic beverages: hours of sale.

The Alcoholic Beverage Control Act provides that any on- or off-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day, and any person who knowingly purchases any alcoholic beverages between those hours, is guilty of a misdemeanor. Existing law provides for moneys collected as fees pursuant to the act to be deposited in the Alcohol Beverage Control Fund, with those moneys generally allocated to the Department of Alcoholic Beverage Control upon appropriation by the Legislature.

This bill would allow an on-sale licensee to apply to the Department of Alcoholic Beverage Control to authorize, with or without conditions on the on-sale license, the selling, giving, delivering, or purchasing of alcoholic beverages at the licensed premises between the hours of 2 a.m. and 4 a.m., upon completion of specified requirements by the local jurisdiction in which the licensee is located and upon payment *of* a fee to be deposited in the Alcohol Beverage Control Fund, as provided. ~~This~~ *The* bill would require the applicant to notify specified persons of

the application for additional hours and would provide a procedure for protest and hearing regarding the application. *The bill would prohibit a new license to operate during extended hours under these provisions from being issued until any existing license issued by the department at the premises has been canceled.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It is the policy of the state to promote the responsible
4 consumption of alcoholic beverages through making multiple
5 planning options available to local communities and entertainment
6 areas of the state, including the option of extended services hours
7 up to a limit of 4 a.m. in communities and areas of the state where
8 those extended hours are found by the governing body of the
9 responsible community to be proper and appropriate.

10 (b) It is the policy of the state to encourage local communities
11 to implement local entertainment and licensed venue operation
12 policies designed for their specific communities and to support
13 those local initiatives by all appropriate means.

14 ~~(c) It is the policy of the state that modified closing times can~~
15 ~~improve the quality of life in local jurisdictions by mitigating~~
16 ~~public safety and nuisance issues associated with the uniform 2~~
17 ~~a.m. closing hour.~~

18 ~~(d) It is the policy of the state that local communities consider~~
19 ~~different approaches to address issues of the 2 a.m. uniform closing~~
20 ~~hour and encourage responsible consumption by, including, but~~
21 ~~not limited to, extending service hours within a limited~~
22 ~~geographical area, staggering service hours to alleviate stress on~~
23 ~~public services, differentiating between the end of sale hour and~~
24 ~~the end of consumption hour, and extending service hours only on~~
25 ~~holidays or specific days of the week.~~

1 ~~(e)~~

2 ~~(c)~~ At least 15 states across the country delegate complete or
3 partial authority for setting service hours to local jurisdictions or
4 allow local jurisdictions to extend the hours of service, subject to
5 state approval.

6 ~~(f)~~

7 ~~(d)~~ The Legislature supports a well-planned and managed
8 nightlife that can have a profound positive impact on a local
9 economy, generating direct tax revenues, and growing public funds
10 through ~~increased property value~~, revitalized business districts,
11 and increased tourism.

12 ~~(g)~~

13 ~~(e)~~ The Legislature supports the world-renowned California
14 licensed restaurant, venue, and entertainment industry, which
15 generates more than ~~fifty billion dollars (\$50,000,000,000)~~ *\$50*
16 *billion* every year in consumer spending in California communities
17 on jobs, goods and services, and related industries, and that attracts
18 world-class acts as well as tourists to visit and enjoy California.

19 ~~(h)~~

20 ~~(f)~~ The Legislature has determined that it is in the best interest
21 of the State of California for extended hours of operation policies
22 to be administered by the Department of Alcoholic Beverage
23 Control in connection with applications for additional hour
24 privileges, with the fees for those applications to be determined
25 and assessed by the department at a rate that will fully reimburse
26 the department for administrative expenses.

27 SEC. 2. Section 25631 of the Business and Professions Code
28 is amended to read:

29 25631. (a) (1) Except as provided in subdivision (b), any on-
30 or off-sale licensee, or agent or employee of that licensee, who
31 sells, gives, or delivers to any persons any alcoholic beverage or
32 any person who knowingly purchases any alcoholic beverage
33 between the hours of 2 a.m. and 6 a.m. of the same day, is guilty
34 of a misdemeanor.

35 (2) For the purposes of this subdivision, on the day that a time
36 change occurs from Pacific standard time to Pacific daylight saving
37 time, or back again to Pacific standard time, “2 a.m.” means two
38 hours after midnight of the day preceding the day such change
39 occurs.

(b) (1) In a city, county, or city and county that has additional serving hours pursuant to Section 25634, any on-sale licensee, or agent or employee of the licensee, who sells, gives, or delivers to any person any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 4 a.m. and 6 a.m. of the same day, is guilty of a misdemeanor.

(2) For the purposes of this subdivision, on the day that a time change occurs from Pacific standard time to Pacific daylight savings time, or back again to Pacific standard time, “4 a.m.” means four hours after 12 midnight of the day preceding the day the change occurs.

SEC. 3. Section 25634 is added to the Business and Professions Code, to read:

25634. (a) Notwithstanding Section 25631, the department may authorize, with or without conditions, the selling, giving, delivering, or purchasing of alcoholic beverages at an individual on-sale licensed premises between the hours of 2 a.m. and 4 a.m. within a city, county, or a city and county if the local governing body of that city, county, or city and county, or its designated subordinate officer or body does the following:

(1) Develops and approves a local plan that meets the following requirements:

(A) Shows that the public convenience or necessity will be served by the additional hours.

(B) Identifies the area that will be affected by the additional hours and demonstrates how that area will benefit from the additional hours.

(C) Shows that residents and businesses within the additional hours service area support the additional hours.

(D) Includes an assessment by local law enforcement regarding the potential impact of an additional hours service area and the public safety plan, created by local law enforcement, for managing those impacts that has been approved by the local governing body.

(E) Shows that transportation services are readily accessible in the additional hours service area during the additional service hours.

(F) Includes programs to increase public awareness of the transportation services available in the additional hours service area and the impacts of alcohol consumption.

1 (2) Resolves and certifies the local plan and submits the local
2 plan to the department.

3 (b) Upon receipt of a local plan developed pursuant to paragraph
4 (1) of subdivision (a), the department ~~shall~~ *may* review the local
5 plan to ensure compliance with existing ~~law and regulations~~
6 ~~promulgated by the department. The department shall review the~~
7 ~~local plan within _____ days of receipt and shall notify the local~~
8 ~~governing body of its approval or denial of the plan. During the~~
9 ~~review process the department shall post the local plan on its~~
10 ~~Internet Web site.~~ *law.*

11 (c) An on-sale licensee shall not apply for additional hours
12 pursuant to this section until the department has ~~approved~~ *received*
13 the local plan of the city, county, or city and county in which the
14 licensed premises is located.

15 (d) (1) Upon receipt of an application by an on-sale licensee
16 for additional hours pursuant to this section, the department shall
17 make a thorough investigation to determine whether the additional
18 hours sought by the applicant would unreasonably interfere with
19 the quiet enjoyment of their property by the residents of the city,
20 county, or city and county in which the applicant's licensed
21 premises are ~~located~~ *located*.

22 (2) The applicant shall notify the law enforcement agencies of
23 the city, county, or city and county, the residents of the city, county,
24 or city and county located within 500 feet of the premises for which
25 additional hours are sought, and any other interested parties, as
26 determined by the local governing body, of the application by an
27 on-sale licensee for additional hours pursuant to this section within
28 30 consecutive days of the filing of the application, in a manner
29 determined by the local governing body.

30 (3) Protests may be filed at any office of the department within
31 30 days from the first date of notice of the filing of an application
32 by an on-sale licensee for additional hours. The time within which
33 a local law enforcement agency may file a protest shall be extended
34 by the period prescribed in Section 23987.

35 (4) The department may reject protests, except protests made
36 by a public agency or public official, if it determines the protests
37 are false, vexatious, frivolous, or without reasonable or probable
38 cause at any time before hearing thereon, notwithstanding Section
39 24300. If, after investigation, the department recommends that
40 additional hours be authorized notwithstanding a protest by a public

1 agency or a public official, the department shall notify the agency
2 or official in writing of its determination and the reasons therefor,
3 in conjunction with the notice of hearing provided to the protestant
4 pursuant to Section 11509 of the Government Code. If the
5 department rejects a protest as provided in this section, a protestant
6 whose protest has been rejected may, within 10 days, file an
7 accusation with the department alleging the grounds of protest as
8 a cause for revocation of the additional hours and the department
9 shall hold a hearing as provided in Chapter 5 (commencing with
10 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
11 Code.

12 (5) This section shall not be construed as prohibiting or
13 restricting any right that the individual making the protest might
14 have to a judicial proceeding.

15 (e) (1) If, after investigation, the department recommends that
16 additional hours be authorized, with or without conditions on the
17 applicant's license, notwithstanding that one or more protests have
18 been accepted by the department, the department shall notify the
19 local governing body and all protesting parties whose protests have
20 been accepted in writing of its determination.

21 (2) Any person who has filed a verified protest in a timely
22 fashion pursuant to subdivision (d) that has been accepted pursuant
23 to this section may request that the department conduct a hearing
24 on the issue or issues raised in the protest. The request shall be in
25 writing and shall be filed with the department within 15 business
26 days of the date the department notifies the protesting party of its
27 determination as required under paragraph (1).

28 (3) At any time prior to the issuance of the license, the
29 department may, in its discretion, accept a late request for a hearing
30 upon a showing of good cause. Any determination of the
31 department pursuant to this subdivision shall not be an issue at the
32 hearing nor grounds for appeal or review.

33 (4) If a request for a hearing is filed with the department
34 pursuant to paragraph (2), the department shall schedule a hearing
35 on the protest. The issues to be determined at the hearing shall be
36 limited to those issues raised in the protest or protests of the person
37 or persons requesting the hearing.

38 (5) Notwithstanding that a hearing is held pursuant to paragraph
39 (4), the protest or protests of any person or persons who did not

1 request a hearing as authorized in this section shall be deemed
2 withdrawn.

3 (6) If a request for a hearing is not filed with the department
4 pursuant to this section, any protest or protests shall be deemed
5 withdrawn and the department may approve the on-sale licensee's
6 application for additional hours without any further proceeding.

7 (7) If the person filing the request for a hearing fails to appear
8 at the hearing, the protest shall be deemed withdrawn.

9 (f) The department shall notify the applicant of the outcome of
10 the application for additional hours. Any conditions placed upon
11 the license pursuant to this section shall be subject to Article 1.5
12 (commencing with Section 23800).

13 (g) The applicant shall, at the time of application for additional
14 hours pursuant to this section, accompany the application with a
15 fee of ____ dollars (\$____). Fees collected pursuant to this section
16 shall be deposited in the Alcohol Beverage Control Fund.

17 (h) *An extended license described by this section shall not be*
18 *issued until any existing licenses issued at the premises by the*
19 *department are canceled.*

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.